National Telecommunications and Information Administration
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Comment of the Swiss Federal Office of Communications (OFCOM) on Notice of Inquiry regarding the expiration of JPA with ICANN and DoC
Docket No. 090420688-9689-01

The Swiss Federal Office of Communications (OFCOM) welcomes the opportunity given by the NTIA to comment on the upcoming expiration of the Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN).

Since the internet has become an indispensable tool for the economic, social and cultural development of practically all members of our societies, the stability, well-functioning and continuity of the internet is of essential importance to all of us.

We would first thank ICANN for its performance in the technical coordination and management of the Internet's core resources and also thank the United States Government for having taken on the responsibility of overseeing the performance of ICANN.

In line with the Tunis agenda for the information society, OFCOM shares the view that the existing arrangements for Internet Governance have worked effectively and that the governance mechanism of the Internet's core resources should continue to be improved in an evolutionary manner and following the spirit of an enhanced cooperation, involving all stakeholders in their respective roles.

The four basic principles articulated in the US white paper on Management of Internet Names and Addresses (i.e. stability; competition; private, bottom-up coordination; and representation) still remain of key importance to the management of the DNS. However, there might be need for some clarification in what they mean and what is necessary for them to be achieved. In order for ICANN to live up to these principles, transparency, accountability and representative participation are key.

While we support the principle of transition of the management of the DNS to the private sector, we should not forget – and the financial crisis has painfully reminded us of this – that private sector self-regulation is not exempt from the risk of failure. Given the public value of the Internet, a failure of the private sector managed DNS would be even more detrimental to our societies than the failure of the financial sector has been. We therefore tend to think, that some external accountability in the form of an external oversight and guidance (ideally multi-stakeholder, including governments) might be helpful to minimize the risk of failure of private sector led DNS management.

This external oversight and guidance should also support ICANN in installing a true competition in the Domain names registration market and in avoiding too high entry barriers for new competitors, especially from least developed and developing countries. An appropriate

regulatory framework for such a competitive Domain names registration market should, however, minimize the risk of market failure and of endangering stability of the DNS.

For the pioneering phase of the Internet, the taking on of this oversight and guidance function by one single country over the key functions of the technical management of the internet (IANA-functions) has been a simple and efficient solution. In the long run, and as the internet is developing into a global resource of public interest, we think that this heavy responsibility should be put on more than one shoulder. Any form of internationalized external accountability and guidance should represent the geographic and cultural diversity of the global community. It should not only include big countries (or other constituencies) but also smaller ones and take into account globally agreed fundamental rights and freedoms as well as international law. Such an external accountability system should include a voting system and independent judicial review.

The development of such an internationalized external accountability mechanism should be made with greatest care. The scope and setting of such an internationalized oversight should be clearly defined, and it should in no way lead to capture of the Internet Management nor to interference with the stable and secure well-functioning of the management of the Internet nor should it destroy the innovation potential of the Internet. And it should be accepted by the broad internet community.

Concerning the management of the ccTLDs, OFCOM fully supports the "GAC Principles & Guidelines for ccTLDs" and especially the main principle which states that the ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet Community, according to national law. ICANN should officially recognize that principle.

With regard to ICANN's role in Internet Governance in its broader sense, i.e. discussing and deciding on public policy issues related to the internet, we welcome ICANN's efforts to improve institutional confidence. To live up to the objectives of safeguard against capture, accountability to the multi-stakeholder community, meeting the needs of the global Internet community, financial and operational security means for ICANN to continue on an ongoing basis to improve its structures and mechanisms. In this regard, we note with interest the suggestion that ICANN establish an additional legal presence in a jurisdiction that could provide it with an international not-for-profit status. While continuing to improve its structures and mechanisms, ICANN's activities should remain focused on its role as the coordinator of the Internet's system of unique identifiers and not expand on issues that do not fall within its mandate.

In our view, the most effective safeguard against capture is to broaden and strengthen participation of all stakeholders in ICANN and to create transparency and accountability. In this regard, we would recall the GAC's comments dated 22 December 2008 on the PSC Report Improving Institutional Confidence in ICANN which we fully support.

Furthermore, we welcome ICANN's efforts to take into account the views and concerns of all stakeholders, including the global user community and would encourage ICANN to continue to do so. We congratulate ICANN for having organized the first ICANN At Large summit in Mexico in March 2009 and encourage ICANN to take into consideration the recommendations made in the final declaration of this summit and encourage ICANN to consider holding such

summits on a regular basis. Furthermore, we also encourage ICANN to consider the International Chamber of Commerce's input on the Implementation Plan for Improving institutional Confidence dated 4 May 2009.

These three documents contain a number of valuable recommendations that might help ICANN to better live up to the expectations of the global internet community with regard to the way it executes its monopoly in managing the technical functioning of the Internet. Some of the most relevant recommendations are in our view the following:

- ICANN should continue to improve accountability and transparency to stakeholders including the users, inter alia through developing voting mechanisms and independent judicial review
- ICANN should increase the transparency over its financial situation, its revenue streams, allocation of budget and staff resources, etc.
- ICANN should continue to facilitate access to documents through improving its website, introducing a multilingual system similar to the system of the six UN languages and providing for executive summaries of documents
- ICANN should continue to improve a timely delivery of documents before meetings
- ICANN should develop a professional code of conduct for staff as a safeguard for staff, the community, and the board to ensure the broader ICANN community's respect
- ICANN should try not to overcomplicate its structures, but rather streamline its processes of decision making and reform GAC, At Large and other sub-constituencies in a way that their input raises the quality of discussions and decisions and does not result in blocking innovation and the development of the Internet

We would like to conclude our comments with the following remark: there is nowadays a strong consensus inside and outside ICANN that the Internet Governance should be in a multi-stakeholder process, including all relevant stakeholders in their respective roles. However, to many of these stakeholders, including of those participating in ICANN's work and activities, it is not yet sufficiently clear what their respective roles actually are.

We therefore encourage ICANN and all stakeholders actively participating in ICANN to continue to actively participate also in the Internet Governance Forum (IGF). The IGF, which is open to all stakeholders for discussion on an equal footing, is in our view a unique opportunity to exchange experience, learn from each other and come to a shared understanding of these respective roles based on rough consensus rather than lengthy negotiations. And it can provide useful guidance about how to deal with public policy issues related to Internet Governance on a global level.

In the hope of having constructively contributed to the discussion of the post JPA-period we are looking forward to a future exchange of views.

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